

Summary
Wetland Mitigation Banking Advisory Team
May 24, 1999 Meeting

Advisory Members Present: Merri Erickson, WA Cranberry Alliance; Paul Wagner, WSDOT; Nancy Brennan-Dubbs; USFWS; Gail Terzi, US Army Corps of Eng.; Bob Zeigler, WDFW; Kathy Combs, WA Wetlands & Mitigation Co.; Jodi Walker, Building Industry Assoc. of WA; Jennifer Thomas, King County; Lynn Micheau, Grays Harbor Economic Development Council; Bob Landles (for Paul Roberts), City of Everett; Ron Shultz, National Audubon Society; Steve Erickson, WA Native Plant Society; Sono Hashisaki, Springwood & Assoc. Inc.; Kevin Noon, Critical Habitats Inc.

Advisory Members Absent: Gilbert Alvarado, City of Moses Lake; Tony Bynum, Yakima Nation; Bill Garvin, WA Farm Bureau; Joe Mentor, Lasher Holzapfel Sperry & Ebberson.

Ecology Staff Present: Lauren Driscoll, Judy Geier, Patricia Johnson.

Other Interested Parties Present: Bob Kessler, Foster Wheeler Environmental Corp.; Geoffrey Thomas, Lewis County; Rachel Friedman-Thomas, NMFS; Key Baldwin, Shoalwater Bay Indian Tribe; Barb Aberle, WSDOT; Michael Miller, HDR Engineering; Dean and Del Swanson; Dwayne Michel, Farm Bureau and DM Ranches; Jeff Meyer, David Evans & Assoc.; Sarah S. Cooke, Cooke Scientific Services Inc.; Lennie Rae Cooke, Pacific International Engineering; Suzie Rao, House of Representatives; Brian Perleberg, Northern Resource Consulting; Karen Terwilleger, House of Representatives; Julie Keogh, Weyerhaeuser; Steve Madsen, Law Office of Alan L. Engstrom; Bill Lewallen, Snohomish Co. Airport; Heather Roughgarden, WSDOT.

Meeting Materials: Agenda, April Meeting Summary, Additional Comments from April Meeting, Performance Standards and Credit Release Document, Credit Release Matrix and Explanatory Document, Monitoring Issue Paper, Comments on Credit Release and Definitions (Bill Lewallen, Snohomish Co. Airport).

Opening Announcements

Judy Geier began the meeting by mentioning the possibility of a field trip to the Paine Field Wetland banks. She indicated that there was further information on the document table.

Geier briefly reviewed the May 13, 1999 Federal consistency sub-committee meeting. She stated that an umbrella agreement was discussed as a possibility to iron out signatory responsibilities and to outline the banking process that will be agreed upon. The next Federal consistency sub-committee meeting is scheduled for Monday, June 14 at the Corps Seattle Office.

In regard to the April meeting summary, Geier asked the team if there were any additional corrections, comments, or concerns before that document was finalized. Concerning easement

language, a team member stated that not only is development prohibited, but the language also states that timber harvests and possibly certain herbicide and pesticide applications are prohibited as well.

Performance Standards

Lauren Driscoll introduced the Performance Standards and Credit Release document by identifying the questions that she wanted the team to focus on answering. Those questions are as follows:

- Should the rule identify general categories for performance standards with specific Performance Standards identified in the Bank Instrument?
- Do you support a tiered approach to performance standards?
- Are the proposed categories for each tier sufficient? Others?
- Shall the rule include that some performance standards may be identified as critical and that they must be met for credit release?
- Do you concur that some performance standards may be required to be met for more than one year?
- Shall the rule specify that performance standards must:
 - be desirable,
 - be linked to an objective,
 - have a specific monitoring protocol identified, and
 - have a matched remedial action identified.
- Shall the rule specify the requirements for a contingency plan in a bank instrument?
 - What actions?
 - Who decides?
 - When?
- Do you concur that the rule should state that if all performance standards are not met, the number of credits available at the bank may be adjusted?

Driscoll then outlined certain elements of the bank instrument (or any mitigation plan) that are relevant to a big picture view of how performance standards fit into the process. Those elements are as follows:

- Goals of the bank – a general statement defining the general intent of the project.
- Objectives – linked to the goals but more specific.
- Performance standards – specific measurable variables related to objectives.
- Monitoring – methods to measure the performance standards.
- Contingency plan – remedial actions necessary to rectify a situation in which performance standards are not being met.

At this point a team member stressed that maintenance should be tied to performance standards.

Driscoll then explained that Chapter 90.84 RCW requires that the phased release of credits be linked to the attainment of different performance standards. To help accomplish this, a two-tier approach was proposed. It was explained that this approach was designed to ensure an ecological gain and yet allow some release of credits, thereby creating a balance between ecological risk to the environment and financial risk to the bank sponsor.

The first tier of performance standards was essentially meant to determine if the site was a wetland. Attainment of these performance standards would constitute an early release of credits.

The second tier was meant to ascertain if the bank achieved the right types of wetlands according to what was proposed for the goals of the bank. This would result in a final release of credits.

The first tier of performance standards would include those items identified in the Federal Guidance as required before any release of credits plus several other criteria. The proposed Tier 1 performance standards are as follows:

- Planning - approved site design and approved bank instrument (B.I.)(required by Federal Guidance).
- Protection - long-term protection of the site and adequate financial assurance (F.A.)(required by Federal Guidance).
- Construction - acceptance of as-built condition.
- Hydrology – consecutive days of saturation equal to or greater than 12.5% of the growing season, about equal to one month in western Washington.
- Vegetation – correct vegetation planted and surviving, percent aerial cover, health/vigor, percent invasive species.
- Area (this may be assessed at Tier 1 or at Tier 2) – to determine how much area of the bank site is actually a wetland.

Tier 2 performance standards are as follows:

- Target Hydrology - target hydrologic regime linked to specific habitat characteristics
 - depth
 - duration
 - frequency
- Vegetation
 - health
 - reproduction
 - diversity
 - invasive
 - structure
- Habitat elements – structural elements linked to habitat for a target species
- Other site-specific performance standards.
- Area – how much area is actually wetland

Driscoll then outlined Ecology's proposal for how the rule should address performance standards and how the bank instrument should address performance standards.

The Rule should include or state:

- General categories for performance standards based on a tiered approach.
- Criteria for performance standards.
- That critical performance standards may be required.
- That the total number of credits at a bank may be re-evaluated if performance standards are not met.

The Bank Instrument(s) for individual banks should identify:

- Specific performance standards.
- Critical performance standards, such that if these standards are not met then 1) remedial actions must be implemented or 2) credits cannot be released.
- If some performance standards must be met for two or more years (e.g. hydrology).
- A contingency plan.
- The credit release schedule.

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- Documentation – monitoring requirements.

At this point the discussion was opened to advisory team members' questions and comments, which are as follows:

- It was stated that evaluating vegetation in the first tier may not indicate much about the long-term survival or success of that vegetation.
- Ecology responded that the goal was to determine if the proper plants were planted in the proper manner.
- Another team member expressed concern about the Tier 1 hydrology performance standard and the fact that theoretically that standard could be met in the first year of the bank.
 - It was stated that this early it would be difficult to tell, the hydrology could be a fluke or due to a particularly wet year.
 - It was also mentioned that this could lead to the construction of deeply dug wetland "bathtubs" in order to assure early hydrology attainment.
 - It was suggested that more background data should be required.
- Ecology responded that if we want banking to be successful we should not penalize bankers. With current compensatory mitigation, the impact occurs and maybe the mitigation is correct, maybe not. It is apparent that this type of mitigation is not working now. With banking, we should allow some release of credits early on if the site is technically a wetland.
- It was stressed that background data at the site should be required to answer, "where is the hydrology?" Also, a banker should have to consider current and future adjacent development and how that will impact hydrology at the bank site.
- Ecology responded that this information is tied to the site selection criteria and that it would be considered. It was also stressed that saturation for 12.5% of the growing season would be the minimum. If this was attained, at least we know the site is technically a wetland. It was stated that with current compensatory mitigation the same 12.5% is required, but is usually looked at after 5 years. So this banking standard would be more stringent since the 12.5% is looked at earlier in the process and a more stringent target hydrologic regime would be required as the Tier 2 performance standard (P.S.).
- It was commented that many mitigation plans don't have hydrology standards.
- A team member expressed concern over requiring both a hydrology and an area P.S. It was commented that this seemed redundant, especially since area is specified in the site selection criteria, and a delineation would most likely be required to determine both of them. It was stated that this seemed like extra work for the same information.
- Ecology responded that a quasi-delineation could be performed just to check saturation. This one measurement could answer both the area and the hydrology P.S. It was stressed that this information would be crucial for determining how many credits were available to a bank.
- A higher hydrology standard was suggested to avoid ending up with a wetland of just invasive vegetation. It was commented that the 12.5% minimum level of hydrology would create conditions perfect for the proliferation of invasives such as reed canarygrass and creeping buttercup. Bankers should be encouraged to aim higher.
- A team member responded that if a banker created a wetland dominated by invasive vegetation, the number of credits available for that bank would be greatly diminished. Permitting agencies may greatly restrict the use of such banks to compensate for impacts.
- A team member questioned how bankers could be encouraged to do more than just grade a site. Should it be left up to the Mitigation Banking Review Team (MBRT) to ensure an adequate site design and background data with a technical review of the design and the planned vegetation? The rule can't be too prescriptive.
- It was stated that the proposal language is pretty much identical to what is done now. It was suggested that this rule take it a step further by looking at the ecological design for the

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wetland from a landscape perspective. The rule should have language that addresses the wetland processes to ensure the long-term viability and sustainability of the bank site, such as addressing where the water is coming from and how this might change over time. It was stated that benchmarks are important, but to really have successful wetland banks more is needed.

At this point in the discussion Geier redirected the team to focus on the questions. It appeared that the team wanted rule language that was prescriptive and yet flexible – a balance. Geier asked the team if the Ecology proposal to have minimum, baseline Tier 1 standards and targeted site-specific Tier 2 standards seemed reasonable. Were the Tier 1 P.S.'s acceptable? Team member responses and comments are as follows:

- It was questioned if the MBRT could leave a P.S. category off if it was not applicable. All categories should not be required for all projects, but only where applicable.
- Ecology responded that the rule must provide some stability, some bare minimums.
- A team member stated that the rule should not lock bankers in, for example, area and hydrology may be determined simultaneously. Another example was preservation banks, which would not need construction P.S. – this would not be applicable.
- A team member suggested some possible tools, besides standard delineation, to assess hydrology and wetland area. Ag land mapping of wetlands and the Food Security Act Manual are methods that are not as exact as delineation, but they are a good way to assess area and hydrology in disturbed sites. It was stated that something like this would be necessary before there should be any release of credits.
- It was stated that the Tier 1 P.S. should be a checklist, but at the discretion of the MBRT, they may not be pertinent to all banks.
- Another team member stated that all the Tier 1 P.S. would be necessary and that more specific Tier 1 standards should be in the rule. It was commented that the MBRT would only be as good as the members who were able to participate.
- It was commented that the rule should be general to allow flexibility and that incentives should be used to tie in ecological design on a landscape level.
- It was reiterated that the 12.5% hydrology P.S. was marginal at best and that if this was to be in the rule there should also be a caveat stating that this is not the target, but only the minimum.
- It was stated that the rule be general. A team member suggested the following rule language: The site has met or demonstrates a high likelihood of meeting the targeted wetland hydrology and supporting the target community. Additional information would be provided in the bank instrument.
- A team member commented that the Tier 1 P.S. were a good short list. However, it should be made clear to bank sponsors that if they do not go beyond the 12.5% hydrology standard they may not get a Tier 2 release of credits (due to the low quality of the wetland).
- It was also suggested that there should be incentives for monitoring functions beyond what the listed P.S. call for.
- It was mentioned that to restore a forested wetland the hydrology is about 6 inches below the surface. Considering this would influence the site design and site selection.
- The Tier 2 P.S. get at a higher level of design attainment/higher functions, i.e. hydrologic regime, water quality, sediment trapping. In Tier 2 there should be a demonstration or measuring of functions with a performance standard to prove that it is a functional mitigation.
- It was questioned how the attainment of functions could be monitored and how this could be encouraged. Perhaps through the timing and amount of credits released.

- Incentives for going beyond the average were stressed. For example, the banker who goes out of his/her way to obtain the background information on what emergents were native to a bank site and then obtains and plants those specific species should be rewarded somehow.
- Ecology responded that the more background information, detail, and specific P.S. a banker provides, the more confidence the MBRT will have and the earlier credits will probably be released.
- A team member suggested that in addition to critical P.S. which must be met or else, there should be positive feedback as well. For example, if certain exceptional P.S. are met then give the bank sponsor an "apple". The MBRT could consider higher standards and give an incentive if they are met.
- A team member asked what the process for decision-making, appeals, and remedial actions would be. Ecology replied that this would be addressed in up-coming meetings.

At this point Geier summarized the general thoughts that seemed to be coming from the team concerning the Ecology P.S. proposal. The tiered approach seemed good as long as it remains flexible and not prescriptive. It addressed measurable standards that would allow for some release of credits early on. The general short list P.S. of those tiers also seemed adequate except that the team did not want to encourage the minimum hydrology standard. Rather, the team generally felt that there should be some sort of incentives for going beyond.

The team also seemed to generally concur that certain specified standards may be required to be met before there could be an accompanying release of credits. It was suggested that if a bank cannot meet hydrology then there should not be a release of credits, or if a specified critical standard is not met after a certain length of time, then contingency actions may be required.

The team also generally agreed that some standards may require two or more years of attainment before credit would be released. An example of amphibian breeding habitat was given as an identified function that would require a stable water level, and that stability may have to be demonstrated for at least two years. However, at least one team member expressed concern that P.S. would have to be met for multiple years before there could be any release of credits.

A team member raised a question concerning how released credits could be used on the permitting end. Specifically, how could a decision to use bank credits for an impact be challenged? Ecology responded that this is a debiting question that which will need to be discussed at an upcoming meeting.

Public Comments

At this point, the discussion was opened to public comments and questions. They are as follows:

- Concerning the Tier 1 P.S., it was stated that surveying vegetation and hydrology are part of the approval of the as-built condition. It was suggested that vegetation, hydrology, and area all be assessed at the as-built monitoring. Additionally, it was stated that considering vegetation early in the life of the bank was a disincentive to the creation upland mosaics and phased planting.
- It was suggested that maintenance be included as a performance standard. If it was required it would get done. As it is currently, it is not required, it does not get done, and that is a big reason why mitigations fail.
- It was mentioned that the MBRT is a partnership between the agencies and the banker. Each has expectations that are then collectively worked out and the applicable P.S. are agreed to. When they are met there should be some release of credits. The rule should be flexible.

- It was stated that hydrology requirements would differ from site to site. The MBRT should determine if standards higher than 12.5% are necessary.
- It was mentioned that for both Tier 1 and Tier 2 P.S. that in addition to hydrology and vegetation there should be an understanding of what wildlife species the wetland is targeted for. There should be some P.S. and accompanying measurement for habitat features specific to that species.
- It was stated that saturation for 12.5% of the growing season is a national standard. It gets at vernal pools present on the eastside of the Cascades, but that standard is not really applicable for western WA. For westside wetland types there should be saturation throughout July, August, and September.

Release of Credits

Driscoll introduced the Credit Release Matrix document. She began by defining the column headings, which are as follows:

- Earliest year = the earliest possible year that those credits could be released.
- Performance standard.
- Credit release % = cumulative, the percent listed is the total inclusive of previous releases.
- Benefits = economic and ecological.
- Risks
- Risk Management = activity to manage risk.
- Actions
- Rule/Bank Instrument = what would be stated in either the rule or in the bank instrument.

Driscoll then outlined the proposal. Tier 1 P.S. attainment could occur between years 0-2 and result in 30% release of credits. Tier 2 P.S. attainment could occur after year 3 and beyond and could result in the release of all remaining credits.

Driscoll then identified the criteria for each level of possible credit release. The levels and their criteria are as follows:

- Year 0 - Release \leq 10%
 - Bank Instrument (B.I.)
 - Site Secured
 - Financial Assurance (F.A.)
- Year 0 - As-builts \leq 10%
 - Same as above except that site is constructed and As-built condition has been approved.
- Year 1-2 - Release \leq 30%
 - Hydrology (Tier 1) 1-2 years for sites at risk
 - vegetation - survival
 - invasive species
 - Area
- Year 3 (Tier 2) - Release \leq 50%
 - Target hydrology
 - Vegetation - target classes % cover, health, and reproduction.
 - Habitat elements
 - (Area)
 - Actions:
 - Replacement ratios may be reduced
 - Contingency Actions
- Year 5-10 - Release \leq 100%

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- Area Delineation of site
- Site specific P.S.
 - hydrology
 - vegetation
 - invasives
 - habitat

Actions:

Release contingency Financial Assurances.

Adjust total credits if P.S. cannot be attained.

It was clarified that monitoring would continue all the way through to the full attainment of credits.

The team discussion of this topic was as follows:

- A clarification of the difference between the two year 0 rows was requested.
- Ecology responded that the first year 0 listed was consistent with the requirements under the Federal Guidance. The second year 0 was essentially the same except that construction had been completed. The two year 0's were presented as an either/or and Ecology wanted to get advisory team feedback on which option made the most sense.
- A team member favored the year 0 with as-built release option. At least something physical has happened on site to restore hydrology.
- Another team member favored being consistent with the Federal Guidance and having initial release once the site is secure, before construction. This is also consistent with signed agreements on banking in Washington state, including the WSDOT MOA and the King County rules.
- It was mentioned that if credits were not released until after construction, then a form of financing the bank would be taken away. It was suggested that maybe a first time banker would not warrant the confidence for this pre-construction release, but a banker who had successfully done it before, i.e. a good history, should be trusted with a pre-construction credit release.
- It was mentioned that as-builts were required before any Paine Field credits were released. Under the Paine Field agreement 50% of credits were released at as-built.
- It was suggested that the rule should not preclude either option for early release of credits. It should be flexible.
- A team member expressed concern that if the credits were released before construction, they would be used and this would result in a temporal loss of environmental function. If a banker has to sell these credits in order to construct, how viable will the bank be?
- A team member questioned what approval of as-built meant, and what would the timeline for this approval be?
- Ecology responded that as-built approval would require a site review and an actual survey, not just a rubber stamp on the original written plan. It would then result in a release of some credits. There are still some significant procedural issues that remain unresolved in addressing the approval of as-builts. No agency currently has a process for approving as-builts. Will every agency sitting on the MBRT need to submit something in writing stating that they have reviewed the as-builts? And what does "approval" of them mean? If someone disapproves of the as-builts do they have the authority to call the construction equipment back in and change some element of the design?
- It was mentioned that a 10% credit release before construction was still less of an environmental risk than current compensatory mitigation where 100% is on the table from the time of permit issuance, which is not necessarily correlated to mitigation construction

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beginning. If credit release before as-built is okay with the Federal Guidance, and if there are adequate financial assurances, then release should be allowed at this point. This would maintain flexibility for smaller banks.

- A team member raised the issue of what would happen if a bank sponsor died or left after the initial credit release, but before the bank was constructed. Who would use the financial assurance to actually construct the bank? Ecology responded that that would need to be identified. Most likely a third party would be contracted to finish the bank.

At this point, the discussion centered on debiting and how the early release credits could be used, if at all. It was assumed that if credits were released, they would be used. However, a team member commented that if the bank instrument could determine where credits were used, i.e. the service area, then why would there not be a way to control how those credits were used? Who makes this decision would depend upon the impact in question and which jurisdiction would have permitting authority over the impact. A team member suggested that if the Corps and/or Ecology were not involved in allowing the use of credits for an impact, such as for impacts mitigated through local permits and ordinances, then Ecology and the Corps would not be able to assure that the use of Banking to mitigate those particular impacts was appropriate. It was noted then that the debit side of banking will need to be discussed at a future meeting. It was stressed that credit-tracking requirements will need to address debiting and prevent any double debits. A team member stressed that if credits could be used as soon as they were released and the debiting/permitting was truly a separate process, then the bank must be in operation before credits should be released.

Team member discussion proceeded as follows:

- It was stated that an initial 10% was not such a great amount to be concerned about.
- Another team member suggested that the initial 10% release should be valued or weighted differently than any later credits released. The potential risk of environmental loss would be weighted against the credits – devaluing them, i.e. an initial credit would be worth 80% of a later credit, for example.
- It was replied that this should be a permitting decision - requiring more credits for the impact, for example. Ecology responded that devaluation had been considered, but it seemed to double penalize the banker, because credits would be de-valued by the permitting agencies anyway through their replacement ratios. Trying to track devalued credits would be an unnecessary complication and it would be difficult to communicate this devaluation to the permitting agencies. Ecology stated that the financial assurances were to manage the risk of credits released before construction.
- It was mentioned that a potential credit buyer would not want to buy a devalued credit when a couple years later a full value credit could be obtained.
- It was commented that an impact at one end was being traded for just a signed document at the other end. Release of credits should be tied to the attainment of P.S.

Ecology responded that for banking, an appropriate P.S. could encompass many things, not just structural elements such as hydrology, but also financial assurances, site protection, and signed agreements.

Public Comments

Public comments are as follows:

- It was mentioned that a wetland bank would have a conservation easement protecting the site. Additionally, the site may already have some wetland functions, so there may not be a loss if 10% is released before construction.
- Nationally, past banks have received:

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- 5% for the conservation easement.
- 5% for the financial assurances.
- Removing exotic = another release.
- Hydrology = further release.
- Planting native vegetation = credit release.
- If the site has Threatened or Endangered species = more credit release.
- Education and recreation = credit release

In total this could result in between 30% - 40% release of credits.

- It was suggested that there be a "sale of credits" category which would be between the banker and the buyer. These credits could be sold, but they could not be used, because they had not been released. Therefore, the environment was at no risk and yet the banker was able to generate funds. It was suggested that credits not be released until after the bank was built, but allow the banker to pre-sell credits. That way only the banker and the customer are taking a risk. Once the bank is built it was suggested that 50% of credits be released and the remaining credits should be held until all P.S. are attained.
- It was stated that 10% early release was not enough. It was stressed that such a low initial release could create an economic disincentive for bankers since so much up-front capital is necessary for construction and financial assurances. In order to get things up and going a banker needs a higher percentage of pre-release. It should be up to the MBRT to decide, i.e. flexibility in the rule.
- It was suggested that as-builts should be considered in years 1-2 and that 30% should be released at that point since they are the Tier 1 P.S. There is an environmental benefit in just preserving the land.
- Ecology responded that as-built condition could be approved without attaining hydrology.
- It was stated that the Tier 1 P.S. went against phased planting. It favors planting all at once to attain the vegetation P.S. By releasing 30% at as-built then initial plantings are in and further plantings could be phased in to attain the Tier 2 P.S.

Credit Release part II

Ecology requested that the discussion focus on the proposed credit release percentages. Did the team feel that the proposed percentages were adequate? Too much? Not enough? Advisory team discussion of credit release resumed as follows:

- A team member suggested that an initial release of credits prior to as-built approval should be up to the discretion of the MBRT. If the site is a priority site and there is high confidence in the likelihood of success then releasing credits at this point would be a boost for restoring high priority sites.
- If the proposed bank involves preservation of a riparian corridor or an already functioning wetland (or enhancement) then there is higher confidence in the site and a higher early release percentage may be warranted. It depends on the situation.
- A team member reiterated that by having a signed bank instrument, posting financial assurances, and protecting the site certain P.S. were already met. A 10% release at this time would not be such an environmental risk, because there would be some benefit in assuring that the land would not be developed.
- Credit release should be structured to balance the environmental gain of building the bank with the environmental risk of selling credits before the bank is completed.
- A team member expressed concern over the earliest year of release column on the matrix. It was questioned whether the years would be set in the rule.
- It was stated that some P.S. may require two or more years of attainment.
- It was stressed that the rule needs to be flexible. If P.S. can be met in 10 months do not make the bank sponsor wait a full year before this is acknowledged and credits are released.

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- A team member commented that the years and tiers were confusing. The matrix should be simplified. A 10% early release and then all further releases should be made when the P.S. are met – without requiring a timeline.
- It was responded that monitoring reports would indicate if and when P.S. were met, but the monitoring and reporting would probably be tied to a particular time of year.
- It was questioned whether the bank sponsor could initiate an earlier MBRT meeting and site inspection if P.S. are met ahead of schedule.
- A team member mentioned that the Corps requires approval of as-built condition within 13 months of permit issuance.
- It was stated that two years would be needed to document hydrology.
- A team member responded that the rule should be flexible enough that if the site meets P.S. before a year then credits should still be released.
- A team member suggested that the timelines be used to trigger remedial action vs. managing expectations of a site. For example, if after two years a site has not met a particular P.S. perhaps something should be done to remediate.
- A team member mentioned that the WSDOT MOA had an initial 50% release of credits when the as-built condition was approved. The team member expressed some concern regarding conflicting credit release percentages between existing banking agreements and the state rule. It was also pointed out that the King County rules allow for a 25% credit release at as-built. A conflict with the state rule would require King County to revise its rule.
- It was suggested that the focus should be on meeting P.S. and less on meeting a timeframe.
- It was questioned whether there was a minimum timeframe before which P.S. could not be verified based on scientific data. In response, it was mentioned that there is science behind timeframes for successful mitigation – up to ten years. Some P.S. require lengthy timeframes.
- Ecology responded that it wanted to avoid over planting of vegetation just to get an early attainment of vegetation P.S. Perhaps the bank instrument should specify a minimum timeframe dependent upon the site.
- It was mentioned that with no sites in mind, how can we judge how long or short a time it would take to meet P.S. Flexibility. Every site will be different.
- It was questioned whether the advisory team could assign duties to the MBRT. Ecology responded that the roles and responsibilities would be spelled out in the rule and in the federal subcommittee umbrella agreement.
- Ecology noted that the 10% early release seemed generally acceptable for most of the team members. However, for at least one team member the 10% release appeared to restrictive. King County rules support a 25% release with approval of as-builts. This is twice as restrictive as the WSDOT MOA and the Paine Field agreement. The rationale behind the timeframes was to have a minimum number of years before which there would not be confidence that P.S. had actually been attained. Ecology advised the team to forget the timeframe and focus the discussion of the release percentages.
- A team member suggested that to overcome the timeframes, the functionality of the site should be focused on. If a sponsor feels that P.S. will be met earlier than average then more frequent monitoring should be implemented to document this.
- A team member suggested that the credit release be simplified: 10% at bank instrument, financial assurance, and site protection; 50% at hydrology P.S. attainment; and 100% at all P.S.
- One team member was concerned with releasing 50% at hydrology. This was too much, perhaps 30% would be okay.
- Another team member felt that 10% release was too much before the site was even built. 10% prior to as-built was unacceptable unless there was some preservation component.

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- It was clarified that a preservation bank could receive 100% of credits with a signed bank instrument.
- It was mentioned that by the time a bank instrument has been signed a great deal of time and planning has gone into a bank proposal.
- A team member questioned whether a phased project, i.e. 40 acres, but 10 acres at a time, would need to be protected all at once. Would an easement be required up-front on the whole 40 acres? It was responded that the easement would be required up-front. The phases would be agreed upon up-front, and the construction could occur in phases. It was stated that an easement against the deed was required prior to permit issuance.

At this point in the discussion Ecology asked the team if there was anything in the proposal for credit release that could not be lived with. The team's responses are as follows:

- It was stated that the WSDOT MOA provided 50% release at as-built approval. The team member was not comfortable agreeing to less than that.
- Another team member stated that the King County rules for banking allow 25% release at as-built approval. If the Washington state rule was more stringent than this then King Co. would have to revise their rules otherwise it would be in conflict with the state. It was mentioned that the King Co. rule allowed 25% at as-built; 50% at hydrology; and 100% at remaining P.S. The timing of these would be left to the monitoring report. It was mentioned that when the King Co. rule was drafted (January of 1999) it was considered to be restrictive. It was additionally commented that the King County bank site is in its third year post construction, has met all P.S., and is very successful prior to the five-year requirement.
- One team member responded that 25% at as-built was too much – not comfortable with that.

Public Comments

At this point the discussion was opened to audience members. Their comments are as follows:

- Regarding the credit release matrix one audience member suggested the following changes
 - Year 0 – 10% at signed B.I., F.A., and easement.
 - Year 0 – 15% at as-built approval = 25% total. It was commented that a lot can happen between the design and the actual on the ground construction.
 - Year 1 – Up to 35% release (may require 2 years for hydrology). This would be second tier P.S. (so an additional 10% for a total of 35%)
 - Year 3 – Up to 70%, because by this time it should be evident if the site is going to be successful.
 - Remaining credits released in year 5.
 - Regarding the Tier 1 vegetation P.S., it was commented that survival and percent invasive species should not be included as P.S. By requiring survival it does not provide the banker with the freedom or flexibility to get rid of one species on site if it is not working out and replace it with another species. Invasives should be a maintenance requirement rather than a P.S.
- It was suggested that to maintain flexibility the Tier 1 credit release percentage should be higher, 30-40% in the first year. Perhaps 30% at as built, 50% for Tier 1 P.S., and 100% for all P.S.
- Another audience member commented that the matrix should be simplified and more flexible. There should be a 50% release at as-built. Also it was suggested that if threatened and endangered (T&E) species are present on a site there should be a multiplier as an incentive. Do not want to discourage bankers from modifying the land to provide T&E species habitat.
- It was mentioned that flexibility is great, but could allow capricious and arbitrary accusations. Therefore, clear and concise findings are necessary. Need to have more criteria for how the MBRT should make their decisions.

Summary

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- It was stated that the banker and the MBRT will work together to achieve flexibility and get successful and functional standards based on site-specific information.

Monitoring

Patricia Johnson introduced the Monitoring document by stating that the sponsor would be responsible for ensuring that monitoring was conducted and reported according to the provisions of the monitoring plan identified in the bank instrument. Johnson then outlined Ecology's proposal that the rule identify the overall goals of the monitoring plan and the general elements that the monitoring plan must address. The bank instrument (B.I.) would identify the specifics of a monitoring plan on a case-by-case basis.

The proposed goals of the monitoring plan were listed as follows:

- Document baseline of as-built conditions – provides a starting point from which to evaluate a site's progress.
- Document changes/progress overtime.
- Provide information on site conditions via the monitoring report.
- Determine attainment of P.S.
- Contribute to the science of wetland restoration/creation (optional).

The proposed general elements of a monitoring plan were listed as follows:

- Variables to be monitored.
- Methods to monitor the variables.
- Schedule of monitoring, which includes:
 - Timing
 - Frequency
 - Duration
- Photo points.
- Reporting requirements.

The team was then asked to focus their discussion on the following questions:

- Do the goals of monitoring address the appropriate information needs?
- Are there any other elements?
- Should a minimum timeline be set?
- Who should monitoring reports be submitted to?

Advisory team comments are as follows:

- It was suggested that there should be two levels of monitoring, one for compliance of individual banks with their respective P.S. and a second to monitor the effectiveness of the banking program as a whole.
- A team member questioned whether Ecology was planning on establishing a database to track banking. This would further wetland science if the information was kept track of and disseminated to others.
- Ecology responded that a database tied to the 401 database was being proposed to determine if wetlands are being shifted from urban to rural areas and to determine if one type of wetland is being lost while another gained.
- A team member disagreed with the goals of “documenting changes over time” and “providing information via the monitoring report”. It was stated that there are three types of monitoring 1) compliance – is the project consistent with the terms of the B.I.; 2) validation – is the project meeting P.S.; and 3) effectiveness – is the bank providing adequate and appropriate

mitigation. It was suggested that the “provide information via the monitoring report” should be tied to adaptive management.

- It was mentioned that there should be two levels of monitoring. One to monitor basic success of the bank, and the other to monitor the overall effect of a banking program on wetland resources, i.e. what wetland types or functions are banks providing versus the types of wetland impacts being incurred.
- Regarding adaptive management it was questioned how modifications to the system would be built in. And who would decide that modification were necessary?
- Ecology responded that adaptive management and contingency plans would be a separate discussion.
- Two levels of monitoring were again suggested. One to monitor the attainment of P.S. and the other should be long-term maintenance and monitoring.
- It was commented that construction modifications could not be legislated. If problems arise they will be reflected in the as-built monitoring.
- It was stated that the bank instrument should identify remedial actions and link them to the results of monitoring reports.
- Regarding adaptive management, it was questioned how a differentiation would be made between tweaking the system to achieve the bank goals and allowing a modification to the whole system.
- It was stated that the three-credit release system (1-early release; 2-after Tier 1 P.S. met; and 3- after Tier 2 P.S. met) would not encourage creating a diverse sustainable site. It was mentioned that it could take 3-5 years to find where and how to incorporate higher plant diversity. It was suggested that release of credits should be more phased so that individual functions could be identified and tweaked if necessary.
- It was questioned where baseline site information would be addressed. Baseline documentation of the site prior to construction would be necessary to know what the site was like initially in order to compare it to later monitoring reports of what was achieved. It was responded that baseline monitoring and as-built monitoring would be identified in the bank instrument.
- It was suggested that there should be a tracking of the credits used as part of the monitoring report.
- It was stated the “contributing to wetland science” goal should be up to the bank sponsor to do, i.e. voluntarily.
- It was commented that the goals “documenting changes over time” and “attainment of P.S.” were redundant. The number one goal of monitoring should be monitoring for the attainment of P.S. – stick to this.
- It was suggested that the monitoring report include a discussion of why something is not working at a site. For example, if a problem with hydrology attainment is discovered, the monitoring report should discuss what the problem is and why the hydrology is not working. This analysis is often left up to the agencies to determine. Rather, the bank sponsor or the consulting company doing the monitoring should address any non-attainment of P.S., and this should be submitted as a summary or conclusion segment in the monitoring report.
- It was mentioned that the rule could not require annual monitoring for every variable. Full monitoring may not be required every year.

Public Comments

Comments from the public are as follows:

- It was stated that the baseline monitoring would be to characterize the pre-existing condition before construction, then as-built monitoring after construction, and then monitoring for P.S. attainment.

Summary

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- What parameters to monitor should be flexible and identified in an individual bank instrument.
- It was suggested that unless a credit release was expected, maybe a check on the site would be adequate. Mandatory annual monitoring should not be required. The Corps requires monitoring at years 1,2,3,5,7,10, and then 15 and 25.
- It was stated that before there could be an as-built monitoring report there must have been an as-built plan to compare the report to.

Meeting Wrap-up

The next meeting was scheduled for **Wednesday, June 23, 1999**. It will be held at the **US Army Corps of Engineers Seattle Office**.

The following meeting dates were also set: Thursday, July 22, 1999
Thursday, August 12, 1999
Tuesday, September 14, 1999

Additionally, a site visit to the Paine Field and King County banks was tentatively scheduled for Thursday, July 15, 1999. Bill Lewallen, from Paine Field, was organizing this trip and questions should be directed to him (425) 353-2110 ext. 2238.